

(c) *Memorial headstones or markers.* VA will furnish, when requested, a *memorial* headstone or marker to commemorate an eligible individual whose remains are unavailable. A Government memorial headstone or marker for placement in a national cemetery will be of the standard design authorized for the cemetery in which it will be placed. In addition to the authorized inscription on a Government memorial headstone or marker, the phrase “In Memory Of” is mandatory.

(1) *Eligible individuals.* An eligible individual for purposes of paragraph (c) is:

(i) A veteran, which includes an individual who dies in the active military, naval, or air service;

(ii) A veteran’s spouse or surviving spouse, including a surviving spouse who had a subsequent remarriage terminated by death or divorce, who died after November 11, 1998, or a surviving spouse who had a subsequent remarriage and died on or after October 10, 2008; or

(iii) A veteran’s eligible dependent child who died after December 22, 2006.

(A) A dependent child of a veteran is eligible if the child is under the age of 21 years, or under the age of 23 years if pursuing a course of instruction at an approved educational institution.

(B) A dependent child of a veteran is also eligible if the child is unmarried and became permanently physically or mentally disabled and incapable of self-support before reaching the age of 21 years, or before reaching the age of 23 years if pursuing a course of instruction at an approved educational institution.

(2) *Unavailable remains.* An individual’s remains are considered unavailable if they:

(i) Have not been recovered or identified;

(ii) Were buried at sea, whether by the individual’s own choice or otherwise;

(iii) Were donated to science; or

(iv) Were cremated and the ashes scattered without interment of any portion of the ashes.

(3) *Placement of memorial headstones or markers—(i) Veterans.* A Government memorial headstone or marker to commemorate a veteran may be placed in a

national cemetery, in a State veterans cemetery, or in a private cemetery.

(ii) *Other eligible individuals.* A Government memorial headstone or marker to commemorate a veteran’s eligible spouse, surviving spouse, or dependent child may be placed only in a national cemetery or in a State veterans cemetery.

(Authority: 38 U.S.C. 501, 2306)

[70 FR 4769, Jan. 31, 2005, as amended at 72 FR 53432, Sept. 19, 2007; 74 FR 20226, May 1, 2009]

**§ 38.631 Graves marked with a private headstone or marker.**

(a) VA will furnish an appropriate Government headstone or marker for the grave of a decedent described in paragraph (b) of this section, but only if the individual requesting the headstone or marker certifies on VA Form 40–1330 that it will be placed on the grave for which it is requested or, if placement on the grave is impossible or impracticable, as close to the grave as possible within the grounds of the private cemetery where the grave is located.

(b) The decedent referred to in paragraph (a) of this section is one who:

(1) Died on or after November 1, 1990;

(2) Is buried in a private cemetery; and

(3) Was eligible for burial in a national cemetery, but is not an individual described in 38 U.S.C. 2402(4), (5), or (6).

(c) VA will deliver the headstone or marker directly to the cemetery where the grave is located or to a receiving agent for delivery to the cemetery.

(d) VA will not pay the cost of installing a Government headstone or marker in a private cemetery.

(e) The applicant must obtain certification on VA Form 40–1330 from a cemetery representative that the type and placement of the headstone or marker requested adheres to the policies and guidelines of the selected private cemetery.

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(f) VA will furnish its full product line of Government headstones or markers for private cemeteries.

(Authority: 38 U.S.C. 501, 2306)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0222)

[70 FR 4769, Jan. 31, 2005, as amended at 72 FR 53432, Sept. 19, 2007; 73 FR 27463, May 13, 2008]

### § 38.632 Headstone or marker application process.

(a) *General.* This section contains procedures for ordering a Government-furnished headstone or marker through the National Cemetery Administration (NCA) headstone and marker application process for burial or memorialization of deceased eligible veterans and eligible family members. It also contains procedures for requesting the inscription of new emblems of belief on Government-furnished headstones and markers.

(b) *Definitions.* For purposes of this section:

(1) *Applicant* means the decedent's next-of-kin (NOK), a person authorized in writing by the NOK, or a personal representative authorized in writing by the decedent to apply for a Government-furnished headstone or marker and, in appropriate instances, a new emblem of belief for inscription on a Government-furnished headstone or marker.

(2) *Emblem of belief* means an emblem that represents the decedent's religious affiliation or sincerely held religious belief system, or a sincerely held belief system that was functionally equivalent to a religious belief system in the life of the decedent. In the absence of evidence to the contrary, VA will accept as genuine an applicant's statement regarding the sincerity of the religious or functionally equivalent belief system of a deceased eligible individual. The religion or belief system represented by an emblem need not be associated with or endorsed by a church, group or organized denomination. Emblems of belief do not include social, cultural, ethnic, civic, fraternal, trade, commercial, political, professional or military emblems. VA will not accept any emblem that would

have an adverse impact on the dignity and solemnity of cemeteries honoring those who served the Nation, including (but not limited to) emblems that contain explicit or graphic depictions or descriptions of sexual organs or sexual activities that are shocking, titillating, or pandering in nature; and emblems that display coarse or abusive language or images.

(3) *Federally-administered cemetery* means a VA National Cemetery, Arlington National Cemetery, the Soldiers' and Airmen's Home National Cemetery, a military post or base cemetery of the Armed Forces, a service department academy cemetery, and a Department of the Interior National Cemetery.

(4) *Headstones or markers* means headstones or markers that are furnished by the Government to mark the grave or memorialize a deceased eligible veteran or eligible family member.

(5) *State veterans cemetery* means a cemetery operated and maintained by a State or territory for the benefit of deceased eligible veterans or eligible family members.

(c) *Headstone or Marker application process.* (1) Headstones or markers will be ordered automatically during the process of arranging burial or memorialization for a deceased eligible veteran or eligible family member in a national cemetery or a State veterans cemetery that uses the NCA electronic ordering system. Cemetery staff will order a Government-furnished headstone or marker by entering information received from the applicant directly into the NCA electronic ordering system. Unless a new emblem of belief is requested (see paragraph (d)(1) of this section), no further application is required to order a Government-furnished headstone or marker when the national or state cemetery uses the NCA electronic ordering system.

(2) Submission of a completed VA Form 40-1330 (Application for Standard Government Headstone or Marker) is required when a request for a Government-furnished headstone or marker is not made using the NCA electronic ordering system. VA Form 40-1330 requires the applicant to provide information about the decedent, inscription